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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,207	01/15/2004	Ty W. Phipps	29379.00	4873

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EXAMINER

ARK, DARREN W

ART UNIT PAPER NUMBER

3643

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/758,207

Applicant(s)

PHIPPS, TY W.

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/14/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2, 4-6, 9-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 2, the phrase "bait segment...on said primary wire leg adjacent and distal of said blade first and second end segments" renders the claim vague and indefinite since it is unclear how the bait segment can be both adjacent and distal from both the first and second end segments. It should be rewritten as "bait segment...on said primary wire leg **such that it is** adjacent and distal of said blade first and second end segments **respectively**". Also see claims 4, for the same problem.

In regard to claim 2, the term "said pivotable clappers" lacks antecedent basis since "a clapper pivotably attached on at least one of said opposed surfaces" (only one clapper set forth).

In regard to claim 9 which appears to be similar to claims 2 and 4, it is claimed "said bait segment and said fish hook is disposed distal of said first and second angled segments" renders the claim vague and indefinite since claims 2 and 4 recite that the bait segment is adjacent and distal of the first and second segments. Claim 9 appears

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to conflict with what is being claimed in claims 2 and 4, or vice versa. Also see claim 13, lines 9 and 10 for the same problem

In regard to claim 15, lines 10-15, the phrase "...first half...second half...with paired holes...said first clapper...extend from a pair of closely spaced holes...said second clapper...a pair of closely spaced holes..." renders the claim vague and indefinite since it is unclear if the "paired holes" are the same as the holes from which the first and second clappers extend.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bleam et al. 4,962,610.

Bleam et al. discloses a primary wire leg (30) with a forward segment (for 32) and a bait segment (24) with a hook (28); a secondary wire leg (opposing portion of 30 with 12 attached thereto); a blade (12) rotatably mounted on the secondary wire leg (rotatably mounted via swivel 34) and having first and second end segments (48, 50) angled in opposed directions (see Fig. 2); a clapper (44) pivotably attached on at least one of the opposed surfaces of the blade (upper surface 14 of 12 in Fig. 2).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bleam et al. 4,962,610.

Bleam et al. discloses the claimed invention except for a plurality of clappers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a plurality of clappers, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, and because a plurality of clappers would provide more noise than a single clapper. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

7. Claims 1, 2, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilliard 5,146,706 in view of Bleam et al. 4,962,610.

Hilliard discloses a primary wire leg (11) with a forward segment (14), a secondary wire leg (15), and a blade (18), but does not disclose the blade with first and second end segments angled in opposed directions or a clapper. Bleam et al. discloses a blade with first and second end segments (48, 50) angled in opposed directions (see Fig. 2) and a clapper (44) pivotably attached on at least one of the opposed surfaces (14) of the blade (12). It would have been obvious to a person of ordinary skill in the art to employ the spinner blade with the clapper of Bleam et al. in the lure of Hilliard in

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order to provide means for creating a rhythmical clapping sound which contributes to the appeal of the bait to fish.

In regard to claim 2, Hilliard and Bleam et al. discloses the claimed invention except for a plurality of clappers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a plurality of clappers, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, and because a plurality of clappers would provide more noise than a single clapper. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

8. Claims 1, 2, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Baker, Jr. 4,891,901.

Baker, Jr. discloses a primary wire leg (706; see Figs. 22, 23) with a forward segment (704) and a bait segment (708) with a hook; a secondary wire leg (702); a blade (100) rotatably mounted on the secondary wire leg (rotatably mounted via swivel 112) and having first and second end segments (twisted sections of 100) angled in opposed directions, but does not disclose a clapper pivotably attached on at least one of the opposed surfaces of the blade. Baker, Jr. discloses a family of fishing lure using the blade design, enables a fisherman to use the lures either in buzz bait, spinner bait or crank bait modes and that the blades may be interchangeable. Baker, Jr. discloses a blade with first and second end segments (twisted portions of 900; see Fig. 57) and a clapper (901-903; see col. 11, lines 41-45) pivotably attached on at least one of the opposed surfaces of the blade (at holes with ring). It would have been obvious to a person of ordinary skill in the art to modify the spinnerbait/buzzbait of Baker, Jr. such

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that it's spinner blade is substituted for the noise making spinner blade with a clapper in the embodiment of Fig. 57 of Baker, Jr. in order to provide an audio stimuli to the fish.

In regard to claim 2, Baker, Jr. discloses the claimed invention except for a plurality of clappers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a plurality of clappers, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, and because a plurality of clappers would provide more noise than a single clapper. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

9. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Long et al. 4,793,089 in view of Pflueger 1,682,710.

Long et al. discloses a primary wire leg (3) with forward segment (11) and a bait segment (6) with a hook (5) and a weight embedded therein (lead with paint thereon); a secondary wire leg (4b) with a leading segment (4a); a blade (15, 16) with first and second end segments (see Figs. 3-6) angled in same direction, but does not disclose a blade with first and second end segments angled in opposed directions or a clapper pivotably attached on at least one of the opposed surfaces of the blade. Pflueger 1,682,710 discloses a blade with first and second end segments angled in opposed directions (15) and a clapper (24) pivotably attached on at least one of the opposed surfaces of the blade. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the blade with first and end segments angled in opposed directions and a clapper of Pflueger in the lure of Long et al. in order

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to provide a blade which will easily rotate through opposing forces on opposing surfaces, additional flash, and means for generating noise to attract fish.

In regard to claim 8, the clapper is positioned forwardly of the blade trailing end (see Pflueger where 19 is attached to 18 at a location forward of the trailing end).

10. Claims 1, 3, 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laney 5,987,805 in view of Pflueger 1,682,710.

Laney discloses a primary wire leg (62) with forward segment (56) and a bait segment (12) with a hook and a weight embedded therein (composite material with specific gravity in range of 7.5-8.0 which is surface coated with paint); a secondary wire leg (66) with a leading segment (64); a blade (68) with first and second end segments (see Fig. 12) angled in opposed directions, but does not disclose a clapper pivotably attached on at least one of the opposed surfaces of the blade. Pflueger 1,682,710 discloses a clapper (24) pivotably attached on at least one of the opposed surfaces of the blade. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the blade with first and end segments angled in opposed directions and a clapper of Pflueger in the lure of Laney in order to provide a blade which will easily rotate through opposing forces on opposing surfaces, additional flash, and means for generating noise to attract fish.



In regard to claim 8, the clapper is positioned forwardly of the blade trailing end (see Pflueger where 19 is attached to 18 at a location forward of the trailing end).

11. Claims 2, 4-6, 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laney 5,987,805 in view of Pflueger 1,682,710 as applied to claims 1, above, and further in view of Dubois 6,018,901 or Reed 5,499,470.

Laney and Pflueger do not disclose a bait section with an oval cross section. Dubois and Reed disclose a bait segments with oval cross sections (14 & 21). It would have been obvious to a person of ordinary skill in the art at the time of the invention to substitute the bait section of Dubois or Reed for the bait section of Laney and Pflueger in order to provide a bait section which is rounded and more closely approximates the shape of a minnow.

In regard to claim 15, Laney and Pflueger and Dubois or Reed do not disclose the first and second halves each with a pair of holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a plurality of clappers, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art, and because a plurality of holes would provide for multiple connection points to prevent the loss of the clappers. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA